

PT 01-48
Tax Type: Property Tax
Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

FIRST BAPTIST CHURCH)		
OF PINCKNEYVILLE)		
Applicant)	A.H. Docket #	99-PT-0059
)	Docket #	98-73-04
v.)		
)	Parcel Index #	253-115-260
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held at the Illinois State Office Complex, 1100 Eastport Plaza Drive, Collinsville, Illinois on June 27, 2000, to determine whether or not Perry County Parcel Index No. 253-115-260 qualified for exemption during the 1998-assessment year.

James R. Bush, Pastor and Don Craig, treasurer of the First Baptist Church of Pinckneyville, (hereinafter referred to as the "Applicant") were present and testified on behalf of the applicant.

The issues in this matter include: first, whether the applicant was the owner of the parcel during the 1998-assessment year; secondly, whether the applicant is a religious organization; and lastly, whether the parcel was in the process of adaptation or used by the applicant for exempt purposes during the 1998-assessment year. After a thorough review of the facts and law presented, it is my recommendation that the exemption be denied for the 1998-assessment year except for the area occupied by the shed and the land on which it stands.

In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

Findings of Fact:

1. The jurisdiction and position of the Department that Perry County Parcel Index No. 253-115-260 did not qualify for a property tax exemption for the 1998-assessment year was established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 7)

2. The applicant submitted the application for religious property tax exemption to the Department on July 15, 1999. The application stated that the property was adjacent to applicant's main parking lot. The property was not used in 1999; however, it was the intention of the applicant to expand the parking lot sometime in the future. On September 16, 1999, the Department denied the requested exemption finding that the parcel was not in exempt use. (Dept. Ex. No. 1)

3. In 1994 the applicant began a long-range plan for its church. A special offering was begun on August 14, 1994, for the purchase of the subject property and another piece of property. The plan includes the construction of a multi-purpose building for applicant's ministry and outreach. The purchase of the subject property would facilitate the parking for the multi-purpose building. (Applicant's Ex. Nos. 13, 14; Tr. pp. 24-27)

4. A warranty deed dated September 26, 1997, conveyed the property to the applicant. The parcel is adjacent to applicant's other exempt properties. A house and shed were on the property when it was acquired. The applicant offered the house for sale. It was moved to the buyer's location during the summer of 1999. For about two months in 1998 the interim pastor of the applicant, who was retired, would spend time in the house resting between Sunday morning and evening services. (Dept. Ex. No. 1; Applicant's Ex. Nos. 2, 5; Tr. pp. 12, 19-23, 31)

5. The property was to be used either as parking or a playground area for the church. In 2000 it was decided that it would be used as a parking area. The applicant began digging up

the subject property in the summer of 2000 in preparation for use as a parking lot. (Applicant's Ex. Nos. 3, 4, 6-9; Tr. pp. 14, 24, 29)

6. The shed on the subject property stores the applicant's outdoor equipment including its lawnmower and leaf blower. The applicant uses the equipment for maintenance around the church. The applicant was unclear whether the dimensions of the shed were 10x10 or 10x12. (Applicant's Ex. Nos. 2, 5; Tr. pp. 31-32)

7. Prior to the hearing, the applicant was advised that it had a right to have an attorney represent its interests. It declined to do so. (Tr. pp. 17-18)

8. I take administrative notice of the fact that the applicant has been granted property tax exemptions by the Department pursuant to Docket Nos. 84-73-102 through 106, 91-73-2, and 95-73-8, (Applicant's Ex. No. 11)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the Constitutional authority, the legislature has enacted exemption provisions to the Property Tax Act. The statutory provision for exemptions of parking lots is found at 35 ILCS 200/15-125 and states in part as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption, are exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

A house was on the property when the applicant purchased it. During 1998, the taxable year at issue, the only person that used the house was the retired interim pastor. He only used it as a resting-place between church services for a maximum of nine days. This use is incidental. In order for property to qualify for an exemption, the primary use must qualify and not secondary or incidental use. People ex rel. Marsters v. Rev. Salentyini Missionaries, 409 Ill. 370 (1951). The house was removed in 1999. The applicant was unsure, until the year 2000, how the parcel would be used.

The Illinois Appellate Court found that a church owned building which was not used for any purpose and was boarded up during the taxable years in question did not qualify for a property tax exemption for those years. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983). The applicant attempts to distinguish Antioch by stating that the circumstances at issue are more like the facts that were considered by the court in Mount Calvary Baptist Church v. Zehnder, 302 Ill.App.3d 661 (1st Dist. 1998), or in the alternative, Lutheran Church of the Good Shepherd of Bourbonnais v. Department of Revenue, 316 Ill.App.3d 828 (3rd Dist. 2000)

In Mount Calvary, the court considered whether a burned out church, storage building, and parking lots were entitled to a property tax exemption. The court, relying on Our Savior Lutheran Church v. Department of Revenue, 204 Ill.App.3d 1055 (5th Dist. 1990) determined

that the properties were entitled to the exemption. The court found the facts in Antioch distinguishable from the facts it was considering and stated:

First and foremost, the property on which Mount Calvary's burned church sat in 1991 was not newly "acquired" property. The property was the site of an existing church, which, but for the 1989 fire, presumably would have continued to be used, as it had been used for years, as a place of worship. *Id.* at 669.

The property at issue is also newly acquired property that the applicant failed to use in 1998 for exempt purposes. In addition, there was no evidence that prior to the purchase the property was used for exempt purposes. I therefore find the facts in Mount Calvary distinguishable from the facts at issue and not controlling for my determination.

Lutheran Church of the Good Shepherd of Bourbonnais v. Department of Revenue, *supra*, concerned the issue of changing agricultural land to use as additional churchyard or recreational area. The court found the evidence, that the church had elected not to plant crops on the parcels and had mowed or tilled the land in preparation for planting grass seed, was sufficient adaptation to grant the exemption.

In this case, the applicant did not do anything to the property until it decided in the summer of 2000 that it would adapt the property for a parking lot. At that time, the applicant began digging up the subject property for use as a parking lot. The taxable year at issue is 1998 and during that year the applicant did not use the property for exempt purposes.

In the case of People ex. rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt.

Regarding the use of the shed to store applicant's equipment that it uses to maintain the church yard, the appellate court of Illinois has determined that property owned by a church and used for storage of church records and furniture qualified for a property tax exemption. Our

Savior Lutheran Church v. Department of Revenue, 204 Ill.App.3d 1055 (5th Dist. 1990), *appeal denied* 136 Ill.2d 546 (1991)

For the foregoing reasons, I recommend that Perry County Parcel Index No. 253-115-260 remain on the tax rolls for the 1998-assessment year, except for the area occupied by the shed and the land on which it stands.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
July 24, 2001